

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.1259 of 2007

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9th June, 2007

Between :-

P.Govinda Reddy .. Petitioner

And

The State S.H.O.,

Chandragiri Police Station,

Rep.by its Public Prosecutor,

High Court at Hyderabad .. Respondent

HON'BLE SRI JUSTICE M.S.K.JAISWAL

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ORDER:-

The revision petitioner is an accused of an offence punishable under Section 304-A I.P.C., and Section 134(a) read with 187 and Section 3 read with 181 of the Motor Vehicles Act.

2. The III-Additional Judicial Magistrate of First Class, Tirupati, by Judgment dated 01-03-2005 in C.C.No.1236 of 2000 convicted and sentenced the petitioner/accused to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- for the offence punishable under Section 304-A I.P.C., fine of Rs.200/- for the offence punishable under Section 134 (a) read with 187 of the Motor Vehicles

Act and fine of Rs.500/- for the offence punishable under Section 3 read with 181 of the Motor Vehicles Act.

3. Aggrieved by the said conviction and sentence, the revision petitioner preferred Crl.Appeal No.72 of 2005 on the file of the VI-Additional District and Sessions Judge (FTC), Tirupati and by Judgment, dated 11-09-2007, the appeal was dismissed confirming the conviction and sentence as imposed by the trial Court. Hence, the revision.

4. Briefly stated the case is that the petitioner/accused is the driver of a lorry bearing No.APC-4699. D.Girikumar Reddy (hereinafter referred to as 'the deceased') and M.Srinivas (PW.1) were proceeding on their scooter followed by A.Subba Reddy (PW.2) and M.Venkata Ramana (PW.3) on another scooter and they were proceeding towards Tirupati from Chittoor. The lorry which was loaded with cement bags came in opposite direction in rash and negligent manner, lost control and dashed against the scooter of the deceased, due to which, the deceased fell down under the wheels of the lorry and died instantaneously. PW.1 sustained simple injuries. Based on the statement of PW.2, the S.I. of Police, Chandragiri P.S., registered a case in Cr.No.129 of 2000, scene of offence panchanama was conducted, the inquest was held, dead body was subjected to post-mortem examination, the crime vehicle was got inspected by the Motor Vehicle Inspector and after obtaining all the reports, the charge-sheet was laid.

5. The accused denied the accusations. The prosecution examined PWs.1 to 9 and produced Exs.P.1 to P.6. The accused was examined under Section 313 Cr.P.C., where he denied the evidence on record. No defence was produced.

6. The contention of the learned Counsel appearing for the petitioner/accused is that the Courts below erred in believing the discrepant testimony of PWs.1 to 3 and erroneously convicted the petitioner/accused. It is submitted that the evidence on record do not establish the guilt of the accused beyond reasonable doubt and hence both the Judgments are liable to be set aside.

7. On the other hand, the learned Public Prosecutor submits that the evidence of PWs.1 to 3 is cogent, consistent and convincing. Their evidence clearly establishes the culpability of the petitioner/accused. The other circumstantial evidence proves the fact that the deceased died in an accident. Both the Courts below have considered the evidence in proper perspective and hence there are no grounds to

interfere with the said concurrent findings.

8. The point that arise for consideration is as to whether the prosecution could prove its case beyond reasonable doubt so as to sustain the conviction and sentence as imposed by both the Courts below or whether the Judgments rendered by the trial Court and the first appellate Court suffers from any material illegality or irregularity warranting interference by the revisional Court?

9. **Point:-** Having perused the voluminous oral and documentary evidence on record and the Judgments of the trial Court as well as the appellate Court, what is noticed is that the factum of the deceased having died in a road traffic accident on 25-08-2000 at the spot alleged is not disputed. The deceased and PW.1 were proceeding on one scooter whereas the other two eye-witnesses viz., PWs.2 and 3 were proceeding behind them. They are all going to attend a function. When they reached the accident spot, the crime lorry which was loaded with cement bags is said to have been drive by the accused in a rash and negligent manner and hit against the scooter of the deceased, due to which the deceased fell and came under the right side rear wheels of the lorry, resulting in his instantaneous death. The pillion rider of the deceased, who is examined as PW.1, fortunately sustained minor injuries. The plea of the accused is one of denial. What could be gathered from the trend of cross-examination of PWs.1 to 3 is that the accused wants it to be believed that the accident was not due to any rashness or negligence on the part of the driver of the lorry but instead it is the deceased who was driving his scooter in a rash and negligent manner and was under the influence of alcohol. The post-mortem report, which was conducted immediately after the accident, do not contain any symptoms of there being any alcohol in the stomach contents of the deceased. PWs.1 to 3 are categoric and consistent insofar as their evidence with regard to the manner and method in which the accident took place. It is in their evidence that they were all proceeding to a function and at that time the crime lorry, which was being driven by the accused, came in the opposite direction in a rash and negligent manner and dashed against the deceased. Even though they are elaborately cross-examined, nothing concrete is elicited so as to shake them. Their testimony is natural and inspiring the confidence of the Court. They have no axe to grind against the petitioner/accused. When there are no circumstances for either disbelieving the testimony of PWs.1 to 3 or to suspect their presence, the culinary is that their evidence needs acceptance as being truthful which is to the effect that the accident

was due to rash and negligent driving on the part of the accused. The trial Court which had the opportunity of observing the demeanour of the witnesses and also the first appellate Court has critically and carefully analyzed the testimony of the eye-witnesses and held the petitioner/accused guilty. Ex.P.5 is the sketch of the scene of offence. It shows that after the deceased came under the wheels of the lorry, the lorry proceeded to a distance of 50 feet and then came to a halt. If really the accused was bit cautious in driving his vehicle, he would not have driven his vehicle for about 50 feet even after the accident took place. This shows that at the relevant point of time, the lorry was being driven in a high speeds and in a rash and negligent manner. Even upon re-appraisal of the entire oral and documentary evidence on record, I see no reason to take any view other than that has already been taken by both the Courts below. The Judgments do not suffer from any illegality or irregularity warranting interference.

10. With regard to the quantum of sentence, the learned Counsel appearing for the petitioner/accused submits that the accident took place as long back as in August, 2000 and therefore sentencing the petitioner/accused to undergo rigorous imprisonment for a period of one year is excessive. Taking into consideration the nature of the evidence on the record and the submissions made by the learned Counsel appearing for the petitioner/accused, I feel that the quantum of sentence of imprisonment should be reduced to a period of six months.

11. In the result, the Criminal Revision Case is partly allowed reducing the sentence of rigorous imprisonment to six months from one year. Rest of the sentences with regard to fine need be sustained.

The miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

M.S.K.Jaiswal, J

9th June, 2015

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